

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JANI-KING FRANCHISING, INC.
Plaintiff,

V.

JANI-KING (GB) LTD.
Defendant.

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CIVIL ACTION NO.: 3:13-CV-04136-P

Defendant's Original Answer and Affirmative Defenses

Defendant, Jani-King (GB) Ltd., files this, its Original Answer and Affirmative Defenses, and shows the following:

Discovery Plan

1. Defendant admits Plaintiff seeks Level 2 discovery.

Parties

2. Defendant does not have sufficient information or knowledge to admit or deny ¶ 2 of Plaintiff's Original Petition; therefore, deny.
3. Admit.

Venue and Jurisdiction

4. Deny.
5. Defendant does not have sufficient information or knowledge to admit or deny ¶ 5 of Plaintiff's Original Petition; therefore, deny.

Request for Disclosures

6. Defendant admits Plaintiff requests disclosure of the information set forth in Rule 194.2 of the Texas Rules of Civil Procedure.

The Jani-King System

7. Defendant does not have sufficient information or knowledge to admit or deny ¶ 7 of Plaintiff's Original Petition; therefore, deny.

The Regional Franchise Agreement

8. Deny.

JKGB Ceases Making Royalty Payments to Jani-King

9. Deny.

Breach of Contract

10. Deny.

Conditions Precedent

11. Deny.

Request for Jury Trial

12. Defendant admits Plaintiff request a trial by jury.

Attorneys' Fees

13. Deny.

Compliance with Rule 47

14. Defendant admits Plaintiff seeks monetary relief in excess of \$1,000,000, but denies Plaintiff is entitled to any damages and/or monetary relief..

Prayer

15. Deny.

1) Deny.

2) Deny.

3) Deny.

4) Deny.

5) Deny.

6) Deny.

Statement of Affirmative Defenses

First Affirmative Defense

1. The Petition fails to state a claim upon which relief can be granted.

Second Affirmative Defense

2. Defendant asserts Plaintiff's claims are barred by excessive demand.

Third Affirmative Defense

3. Defendant asserts that Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to mitigate its damages.

Fourth Affirmative Defense

4. Pursuant to TEX CIV. PRAC. & REM. CODE §§ 41.001 *et seq.*, if the Court finds Plaintiff to be eligible for punitive damages, which Defendant strictly denies, then any claim for exemplary or punitive damages are subject to statutory limitations.

Specific Denial

1. Pursuant to TEX. R. CIV. P. 94, Plaintiff's claims are barred, in whole or in part, by a failure of a condition precedent; specifically, failure to make a proper demand.

Prayer

Defendant, Jani-King (GB) Ltd., prays as follows:

- (a) Plaintiff take nothing by its claims and Defendant recover its costs and attorneys' fees, if applicable, pursuant to Chapters 38 and 134 of TEX. CIV. PRAC. & REM. CODE;

- (b) Defendant be awarded such other and further relief, general and special, in law or in equity, to which it is justly entitled.

Respectfully submitted,

THE WILLIS LAW GROUP

By: /S/ Michael R. Cramer

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Certificate of Service

I hereby certify that, on November 14, 2013 I electronically filed notice that a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Federal Rules of Civil Procedure.

Via ECF Filing

J. Cary Gray
Jonathan M. Hyman
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/S/ Michael R. Cramer

Michael R. Cramer